

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**October 23, 2007**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, October 23, 2007 was called to order with the determination of a quorum at 7:02 p.m. by Chairman Cecelia Kirkman in the ABC Conference Room in the Stafford County Government Center. Ms. Kirkman introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. She asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Ms. Kirkman said the By-Laws of this Board state that the applicant was allowed up to ten minutes to state their case, the other speakers were allowed up to three minutes to testify, and the applicant was allowed up to three minutes for rebuttal.

**Members Present:** Cecelia Kirkman, Julie Rutledge, Steven Beauch, Larry Ingalls, John Overbey, Angelo Amador and Ernest Ackermann

**Members Absent:** None

**Staff Present:** Rachel Hudson, Zoning Administrator  
Ashley Gregori, Recording Secretary

**Declarations of Disqualification:**

Mrs. Rutledge stated regarding application 2700357, her company and Leming & Healy share some the same clients, but she has not worked on this project. She stated she could render a fair decision.

Mr. Ingalls stated his company was associated with Leming & Healy but he could render a fair decision.

**PUBLIC HEARINGS:**

**VO7-2/2700357 - BOBBY L & G LOUISE CRISP** - Requests a Variance from Stafford County Code, Section 28-24(8)(c) "Permitted Encroachments", to allow an encroachment of an existing deck, on Assessor's Parcel 54A-1D-9. The property is Zoned R-1, Suburban Residential, located at 1019 Julian Drive, Highland Home Subdivision.

Ms. Hudson presented the staff report. She stated the applicant was requesting a variance of 4 feet to the side yard requirement to allow an existing deck to remain. She stated per the Stafford County Code, decks can encroach no more than six feet into the side yard. She stated the single-family dwelling was constructed in 1960, a violation notice was sent February 7, 2007 to remove the portion of the deck that does not meet the side yard setback. She stated final notice of violation was sent May 11, 2007 and the application was filed on May 22, 2007, which places a hold on prosecution.

Mr. Ingalls asked what the 1960 zoning regulations were.

Ms. Hudson stated there was not a Zoning Ordinance until 1964.

Mr. Overbey asked when the deck was built.

Ms. Hudson stated she did not know.

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Mr. Ingalls stated he read the deck was built 19 years ago.

Ms. Hudson stated she did not have any verification of that.

Mr. Ingalls asked if Ms. Hudson would know the regulations for a stoop 19 years ago.

Ms. Hudson stated she did not think there would have been an encroachment.

Ms. Kirkman asked how Code Administration found fit to issue a violation.

Ms. Hudson stated a complaint was filed.

Ms. Kirkman asked if a violation could be issued because of a complaint.

Ms. Hudson stated a violation was issued under Section 28-24(8)c-2 side yard.

Mr. Ingalls stated the deck may have been grandfathered and assuming there was a door on the side of the house then there was probably a stoop.

Ms. Hudson stated she was not sure and Mr. Ingalls should ask the applicant. She stated she would refer to the 1985 Zoning Ordinance.

Ms. Rutledge asked when the County started requiring building permits.

Ms. Hudson stated she worked for the County since 1985 and the Building Code required permits at that time. She stated zoning review was part of the permit process.

Ms. Kirkman asked if a permit was obtained for the deck.

Ms. Hudson stated the current permitting system only goes back to 1997 and she could not access any information from the older computer system.

Ms. Kirkman stated the Commissioner of Revenue cards would assist with research.

Ms. Hudson stated not always.

Mr. Beauch stated the plat shows the deck was 4 feet 6 inches from the side lot line.

Ms. Hudson stated it was hard to tell on the plat.

Mrs. Rutledge asked if the drawings were submitted by the applicant.

Ms. Hudson stated yes. She stated the deck was four feet from the property line.

Mrs. Rutledge stated the Board should ask the applicant.

Ms. Kirkman stated she was concerned about the issue of the violation and whether or not there was a zoning violation. She stated she was not sure the BZA should be holding a hearing on a Variance request. She asked if anyone said there was not a zoning violation there.

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Ms. Hudson stated no. She stated she would check the 1985 Zoning Ordinance and Code book.

Ms. Kirkman stated that would be important to the deliberations.

Debrarae Karnes, Leming and Healy, stated when the applicant purchased the home in 1986 the deck was existing and appeared as if it had been there for some time. She stated they assume, but do not know, if there was some elevation there because of the location of the door. She stated the lot does not meet the current minimum width requirement, so the current deck encroaches into the side yard by 4 feet. She stated the applicant was notified by the County and believed there was a problem because the County said so which was why Mr. Crisp did not contact the Zoning Administrator. She stated that her firm believed if Mr. Crisp had legal representation at that time then the whole issue may have stopped there. She stated the lot was very narrow and there was Resource Protection Area (RPA) in the back. She stated the house was located on the western boundary of the lot, which was common in the development. She showed an aerial photograph of the site and a copy of the plat. She stated the development pattern did not meet current Zoning Ordinance, and it would be a hardship to modify the deck, as it was the primary access and entered the kitchen. She stated the house was built before Stafford County had a Zoning Ordinance.

Mr. Ackermann stated the new house next door was on a 70-foot lot.

Ms. Karnes stated she was not sure of the dimensions, but she hoped they meet the current Zoning Ordinance.

Mr. Beauch asked if there were remains of a concrete stoop.

Bobby Crisp stated he was the applicant. He stated he purchased the home in 1985. He stated none of his neighbors filed complaints. He stated he was asked to cut off 2 feet of his deck by a County official, so in April or May he cut off a portion.

Ms. Kirkman asked if that was before or after Mr. Crisp received the notice.

Mr. Crisp stated he was asked to do it, so he did it.

Mr. Overbey stated the pictures showed where the modifications were made.

Ms. Kirkman stated, in her opinion, the Board should table the item and have Zoning check on the situation. She stated Mr. Crisp might be in compliance now.

Mrs. Rutledge asked when the last time the deck was measured.

Mr. Crisp stated the deck was measured when he drew the pictures.

Ms. Karnes stated the deck was 5 feet wide and 4 feet from the property line. She stated Mr. Crisp did what he was asked to by the County in good faith.

Mrs. Kirkman stated the item should be tabled.

Mr. Overbey made motion to table the item until exact measurements were available.

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Mr. Amador asked if the rails on the deck were from May 22, 2007.

Mr. Crisp stated he had stopped work on everything.

Mr. Amador asked if counsel checked the measurements.

Ms. Karnes stated no.

Mr. Ingalls asked if there was anything to do with stoops and chimneys.

Mrs. Rutledge stated that since there was a side door and a back door then there would have had to be something there to begin with to allow access.

Mr. Amador asked Mr. Crisp why he was accepting the fact that he needed a Variance.

Ms. Karnes stated the 30 days to appeal to the BZA had passed.

Ms. Kirkman asked why Mr. Crisp did not want to get a ruling from the Circuit Court.

Ms. Karnes stated this was what Mr. Crisp asked his lawyers to do.

Ms. Kirkman stated she would like to refer to the Supreme Court case *Cochran v. Fairfax*, which established the definition of a hardship. She asked if the applicant would lose all economic value of the property.

Ms. Karnes stated if the applicant was to lose all economic value of the property that would in effect constitute confiscation, where the County would owe him money. She stated that according to County code the property was approaching confiscation. She stated at this time Mr. Crisp had not lost all economic value of the property.

Mr. Beauch stated the application was not new construction and it was out of the realm of the Supreme Court case, which was referenced.

Mrs. Kirkman stated the width of the lot was unusual.

Ms. Karnes stated the homes were within 10 feet of each other, the plat showed the width of the lot was 75 feet.

Mr. Overby withdrew his motion.

Mr. Amador asked when the last time the staff went to the site.

Ms. Hudson stated she could not tell the Board when Mr. Singer visited the site last.

Mr. Amador stated the picture shows there were changes to the deck and the applicant was only asked to remove 2 feet by the Zoning official.

Ms. Hudson stated, in her opinion, it looks like only a portion of the deck was removed.

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Ms. Kirkman asked if the applicant met with Ms. Hudson.

Ms. Hudson stated J. R. Tyler from Leming & Healy might have called her.

Mr. Beauch asked why the applicant was not applying for a Special Exception.

Mr. Overby stated the Special Exception was only for the house.

Mr. Amador asked if the deck was non-conforming according to the 1986 Zoning Ordinance.

Ms. Karnes stated Mr. Crisp testifies that the deck was there in 1986.

Ms. Hudson stated the deck was an illegal non-conforming structure.

Ms. Kirkman asked if the Zoning office could make a determination.

Ms. Rutledge stated once a violation was issued, the applicant had 30 days to file and Appeal with the BZA, which time has lapsed.

Ms. Hudson stated that was correct.

Mr. Overby asked when the application was submitted.

Ms. Hudson stated this application was submitted on May 22, 2007.

Mr. Amador asked if the applicant contests that, the deck was there in 1986

Ms. Hudson stated yes. She stated the 1985 Zoning Ordinance states that porches, balconies, chimneys, eaves, decks, outside basement entrances and like architectural features may project not more than 6 feet into any required yard provided that no such feature shall be located closer than 6 feet to any lot line.

Mr. Beauch stated, in his opinion, this should be a Special Exception application.

Ms. Kirkman opened the Public Hearing. With no one coming forward, the Public Hearing was closed.

Ms. Karnes stated a Variance was appropriate and the applicant made an effort to comply.

Mr. Amador stated the case should be postponed to November 27, 2007 to allow the County time to measure the deck again. Ms. Rutledge seconded.

Mr. Ackermann asked what precedent would this set for other houses. He stated he would like to know how abutting property were situated.

Ms. Rutledge stated it was a subdivision.

Mr. Beauch stated he did not think it would be setting a precedent.

Mr. Amador stated the applicant did cut two feet off the deck and he was trying to work with the County.

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Ms. Kirkman asked Ms. Hudson to look at the Commissioner of Revenue records to see if they reflected when the deck was built.

Ms. Hudson stated sometimes those records were inconclusive.

Mr. Overby stated he would like to know how many people had owned the property.

Mr. Amador stated that was not the issue.

Ms. Kirkman stated the Board needed to make a decision. She asked if there were any more questions before the Board considered a motion to table Item 1.

**Motion:**

Mr. Amador made the motion to postpone Item 1, to November 27, 2007.

Mrs. Rutledge seconded.

**Vote:**

Motion to postpone passed 5-2

Mr. Beauch – no

Ms. Rutledge – yes

Mr. Ingalls - no

Ms. Kirkman – yes

Mr. Ackermann - yes

Mr. Amador - yes

Mr. Overby – yes

**SE07-11/2700574 - J. ARDENIA GAINES** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standard, R-1, Suburban Residential", to allow therapeutic massage as a Home Business on Assessor's Parcel 44-127. The property is zoned R-1, Suburban Residential, located at 676 Warrenton Road.

Ms. Hudson presented the staff report.

Ms. Rutledge asked if the application was only to allow therapeutic massage.

J. Ardenia Gaines stated the application was to allow therapeutic massage. She stated she was previously a caregiver for the owner of the property. She stated she had a letter of support from Dr. John Armitage and she had been a caregiver in the County for 20 years.

Ms. Rutledge asked if there would be medical supply sales.

Ms. Gaines stated there was an A & L Medical Sales sign on the property, but the sales do not take place in the building. She stated she was nationally and state certified with 30 years of Hospice experience.

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Ms. Kirkman asked if there was enough room for parking.

Ms. Gaines stated there would only be two clients and two employees at any one time.

Mr. Ackermann asked what the adjoining properties were.

Ms. Gaines stated there was a Pizza Hut next to the property.

Mr. Ingalls asked if the business was by appointment only.

Ms. Gaines stated yes.

Mr. Ingalls stated the application states there would be 3 to 6 appointments per day.

Ms. Gaines stated that was correct, each session was 90 minutes to 3 hours long. She stated she would travel to clients who were homebound.

**Motion:**

Mr. Overby made the motion to approve Item 2 with the days and hours of operation Monday – Friday, 10:00 a.m. – 6:00 p.m. and Saturday 10:00 a.m. – 5:00 p.m., with customers by appointment only and off street parking for customers.

Mrs. Rutledge seconded.

**Vote:**

Motion to approve passed 7-0

Mr. Beauch – yes

Ms. Rutledge – yes

Mr. Ingalls - yes

Ms. Kirkman – yes

Mr. Ackermann - yes

Mr. Amador - yes

Mr. Overby – yes

**UNFINISHED BUSINESS**

None

**REPORT BY ZONING ADMINISTRATOR**

Ms. Hudson stated she had not been served the writ from Circuit Court for the Sunshine Home Builders case.

Ms. Kirkman asked Ms. Hudson to check on the status of the case.

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Ms. Hudson stated she would check on the status. She stated there was one case scheduled for the November 27, 2007 meeting along with the continuation of the Crisp case. She stated the December meeting would fall on Christmas Day.

**Motion:**

Mr. Overby made a motion to cancel the December meeting.

Mrs. Ackermann seconded.

**Vote:**

Motion to approve 7-0

Mr. Beauch – yes  
Ms. Rutledge – yes  
Mr. Ingalls - yes  
Ms. Kirkman – yes  
Mr. Ackermann - yes  
Mr. Amador - yes  
Mr. Overby – yes

**ADOPTION OF MINUTES**

September 25, 2007

**Motion:**

Mrs. Rutledge made the motion to approve.

Mrs. Ackermann seconded.

**Vote:**

Motion to approve 6-0

Mr. Beauch – yes  
Ms. Rutledge – yes  
Mr. Ingalls - yes  
Ms. Kirkman – yes  
Mr. Ackermann - yes  
Mr. Amador - abstained  
Mr. Overby – yes



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**ADJOURNMENT**

**Motion:**

Mr. Ackermann made the motion to adjourn.

Mrs. Overby seconded.

8:21 p.m.

ACH

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Rachel T. Hudson, Zoning Administrator